

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216856

DATE: August 22, 1985

MATTER OF: Department of the Interior - Smoking and
Smokers in Federal Buildings

DIGEST:

1. Smokeeaters that would be placed on the desks of Federal employees who smoke can be purchased with appropriated funds where they are intended to and will provide a general benefit to all employees working in the area.
2. No authority exists for the use of appropriated funds to pay for a smoker rehabilitation program for Federal employees who wish to stop smoking. Such medical care and treatment are personal to the individual employee and payment therefore may not be made from appropriated funds unless provided for in a contract of employment or by statute or valid regulation.
3. Our Office has no basis on which to determine whether smoking can legally be prohibited in all work areas of a Federal office. The General Services Administration (GSA) has promulgated regulations set forth at 41 C.F.R. § 101.20.109 which govern smoking in GSA-controlled buildings.

This decision is in response to a request from a contracting officer for the United States Department of the Interior requesting answers to three questions relating to smokers and smoking in Federal buildings. The three questions concern (1) payment for air purifying devices used in Government work space; (2) payment for treatment and rehabilitation programs for Government workers; and (3) authority to ban smoking in Government buildings.

With respect to the question of whether air purifiers that would be placed on the desks of smoking employees can be purchased with appropriated funds, we would not object where the air purifiers are intended to and will provide a generalized benefit to all employees working in the area. Second, there is no authority for the Department to use appropriated funds to pay for a smoker rehabilitation

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program for Federal employees. Finally, General Services Administration regulations anticipate that smoking will be regulated, but not completely banned, in Government offices. However, under some circumstances a total ban could be instituted.

Question 1--Purchase of "Smokeeaters"

The first question is whether appropriated funds can be used to purchase desktop air purifiers, commonly known as "smokeeaters," to be placed on each smoker's desk in the Arizona State Office of the Department's Bureau of Land Management. The contracting officer states that smokeeaters placed on the desks of smokers would benefit "all persons utilizing the building space" and therefore are not "personal convenience items since the purpose of the purchase is to clean the air for all employees." Accordingly, the contracting officer suggests that the purchase should be approved on the basis of our decision in 62 Comp. Gen. 653 (1983) where we allowed the Department to purchase air purifiers for use in a public reading room.

The general rule concerning the propriety of using appropriated funds to make purchases of this type is that "in the absence of specific statutory authority, the cost of special equipment and furnishings to enable an employee to perform his or her official duties constitutes a personal expense of the employee and is not payable from appropriated funds." 61 Comp. Gen. 634, 635 (1982).^{1/} Thus, in that case we disapproved the proposed purchase of a smokeeater that would be installed in the individual office of an employee who was adversely affected by tobacco smoke. We said that since the smokeeater was needed "primarily for the benefit of a single employee" it constitutes "a personal benefit which may not be conferred with public funds."

However, in 62 Comp. Gen. 653 (1983), the case cited by the contracting officer, we held that appropriated funds could be used to purchase two smokeeaters to be installed in the Arizona Public Land Records Room. We said that unlike the situation we considered in 61 Comp. Gen. 634 where the purchase was for the personal use of an individual

^{1/} As explained in 63 Comp. Gen. 115 (1983), this decision was not intended to apply to equipment purchased under the authority of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.

employee, this purchase was permissible since the air purifiers would benefit the public users of the reading room and the employees who worked in that area.

Our ruling in 62 Comp. Gen. 653 was relied upon in B-215108, July 23, 1984 (copy enclosed) which involved circumstances that are much closer to the present situation. In that case we held that the OPM could purchase 10 air purifiers for use in a large "open space" office area occupied by smoking and non-smoking employees. We said that the "air purification of a large office area where the benefit accrues to a group of employees as well as other people having business in the area is analogous to air purification of a reading room where the benefit is for groups of employees as well as outsiders having occasion to visit the room."

Applying these precedents to the case at hand, we would not object to the proposed purchase of smokeeaters which the contracting officer says are needed in order to provide cleaner air for all employees.

Question 2--Payment for Smokers' Rehabilitation Program

The second question we were asked to consider is whether appropriated funds can properly be used "to pay for a smokers' rehabilitation program for all smoking employees who desire to 'kick the habit.'" The contracting officer states that programs involving counseling and referral for treatment of employees suffering from alcoholism and drug abuse have been sponsored by the Federal Government in accordance with regulations issued by OPM. He further states that since "smoking is now considered an addiction of a similar nature and is treated as such, * * * a program of this type [for smokers] would be appropriate and beneficial to both the employee and the taxpayer through improved productivity, work attendance and morale."

The existence of programs sponsored by the Federal Government, in accordance with regulations promulgated by OPM, to assist Government employees suffering from alcoholism or drug abuse do not provide a basis for our approval of the proposed expenditures in this case. We have consistently held that medical care and treatment are personal expenses of an employee and their payment may not come from appropriated funds unless specifically authorized under a contract of employment or by statute or regulation. 63 Comp. Gen. 96, 97 (1983). See, also 57 Comp. Gen. 62 (1977), 53 Comp. Gen. 230, 231 (1973), and cases cited therein.

The regulations governing the programs for alcohol and drug addicted employees were adopted pursuant to specific statutory authority. Sections 521 and 525 of the Public Health Services Act, as amended, 42 U.S.C. §§ 290dd-1 and 290ee-1 (1983 Supp.). These statutory provisions require OPM to develop and maintain "appropriate prevention, treatment, and rehabilitation programs and services" for alcohol and drug abuse "among Federal civilian employees." Comparable legislation has never been enacted that would authorize establishment of health programs to treat smoking or tobacco use by Federal employees.

Furthermore, our Office has held that while those programs that have been established for employees suffering from alcohol and drug abuse do allow appropriated funds to be used to pay for diagnostic and preventive psychological counseling services, treatment and rehabilitation expenses must be borne by the employee. See B-198804, December 31, 1980, and 57 Comp. Gen. 62, 66 (1977). Similarly, new regulations that were recently adopted by OPM provide that the appropriate prevention, treatment, and rehabilitation programs and services required by the legislation for employees with alcohol and/or drug problems shall consist of short term counseling and referrals. 50 Fed. Reg. 16692 (1985), to be codified at 5 C.F.R. Pt. 792.

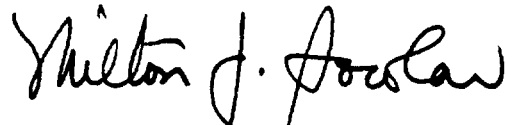
Accordingly, there is no legal basis for using appropriated funds to pay the personal medical expenses of Federal employees that would be incurred as a result of their participation in a smokers' rehabilitation program. It is important to note, however, that this conclusion does not impair the authority of agencies to conduct programs designed to promote and maintain employee mental and physical health short of "treatment and rehabilitation." See 5 U.S.C. § 7901; OPM instructions set forth in FPM, Chapter 292 (Instruction 261, December 21, 1980); 57 Comp. Gen. 62, 66 (1977).

Question 3--Prohibition of Smoking in a Federal Workplace

The third question is whether smoking can legally be prohibited "in all work areas of a federal office by employees and visitors alike." Since GAO is not responsible for establishing or enforcing smoking regulations except in its own office space, we are not able to give you a definitive answer to this question. General Services Administration guidelines for smoking in GSA-controlled buildings and facilities do not anticipate a total prohibition against smoking in these buildings. See 41 C.F.R. § 101-20.109-10

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(1984). It would appear, however, that under certain circumstances an agency has the authority to ban smoking within the space allotted it. For example, GSA regulations state that local laws should be complied with wherever applicable and employees may unanimously declare an office a no-smoking area. Id.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General
of the United States

Enclosures